

P-3003/NA-88-987GRANTING CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Request by Telesphere  
Network, Inc. for a Certificate of Authority to  
Sell Long Distance Service and Provide  
Alternative Operator Services

ISSUE DATE: September 26, 1989

DOCKET NO. P-3003/NA-88-987

ORDER GRANTING CERTIFICATE OF  
AUTHORITY AND REQUIRING FILINGS

PROCEDURAL HISTORY

On May 10, 1988, the Department of Public Service (DPS or the Department) filed a complaint with the Minnesota Public Utilities Commission (the Commission) asking that the Commission order Telesphere Network, Inc. (Telesphere or the Company) to either obtain a certificate of authority under Minn. Stat. § 237.07 (1988) or to immediately cease and desist from providing telephone services in Minnesota. On May 19, 1988, the Commission allowed the Company 20 days to either grant the relief requested in the complaint or to show cause why the Commission should not grant such relief.

On December 22, 1988, the Company filed a request with the Commission for a certificate of authority to provide long distance service and alternative operator services within Minnesota.

On April 11, 1989, the Commission issued its ORDER REQUIRING FURTHER FILINGS in this matter. The Commission indicated that it would authorize the Company to provide long distance services and alternative operator services following the Company's submission of a supplementary filing demonstrating:

1. the elimination of geographical deaveraging from the Company's long distance rates or a showing of good cause that its deaveraged rates are fair and reasonable under Minn. Stat. § 237.06 (1988);
2. proof that the Company has complied with the Minnesota Secretary of State's registration requirements for foreign corporations seeking to do business in Minnesota;
3. the elimination of price discrimination between operator services provided in connection with interLATA calls and operator services provided in connection with intra-LATA calls, or in the alternative, a demonstration that LATA boundaries bear a substantial and reasonable relationship

to the pricing of operator services;

4. proof that the Company has amended its contracts with host facilities to prohibit blocking of end users' access to other operator services providers and to require that rate and service information be prominently displayed near each telephone; and
5. a refund plan pertaining to intrastate revenues collected before the Company received Commission authorization to offer telecommunications services within Minnesota.

The Company submitted a compliance filing on May 12, 1989.

The Department of Public Service (DPS or the Department) filed its report and recommendation on May 22, 1989. The DPS indicated that the Company had satisfied all the Commission ordered requirements for authority to provide long distance services and alternative operator services in Minnesota. However, the Department and the Company disagreed on the Company's proposed refund plan.

## FINDINGS AND CONCLUSIONS

### Long Distance Services

First, the Commission will decide whether to grant the Company a certificate of authority to provide long distance services within Minnesota.

The Commission is guided by Minn. Stat. § 237.16, subd. 4 (1988) which provides that no company shall operate any line, plant or system without first obtaining from the Commission a determination that present or future public convenience and necessity require or will require such operation.

On July 13, 1983, the Commission issued its Order Establishing Reseller Application Requirements in In the Matter of an Investigation by the Minnesota Public Utilities Commission into the Resale and Sharing of Intrastate Wide Area Telecommunications Service, Docket No. P-421/CI-82-619. That Order addressed the resale of long distance telephone services and established fourteen filing requirements for reseller applicants. The Commission finds that the Company has complied with these filing requirements.

However, in its April 11, 1989 Order the Commission found that the Company's proposed long distance rates exhibited geographical deaveraging which the Company was ordered to eliminate or to show good cause why those rates were just and reasonable. The Commission also found that the Company had not complied with the foreign corporation registration requirements of the Secretary of State.

In its compliance filing the Company eliminated geographical deaveraging from its rate structure and demonstrated compliance with Minnesota's foreign corporation registration requirements. The

Commission reaffirms its April 11 findings that the Company's management and financial condition are stable and demonstrate an ability to provide reliable service and to respond promptly to customer complaints. Further, the Commission finds that the Company's technical facilities are capable of providing safe high quality service and that its proposed rates are fair and reasonable as required by Minn. Stat. § 237.06 (1988). The services the Company will offer are subject to competition, and its entry into the market is, therefore, a matter of public convenience and necessity. The Commission will grant the Company a certificate of authority to provide long distance telecommunications services within the State of Minnesota.

### Alternative Operator Services

Next, the Commission will decide whether to grant the Company authority to provide alternative operator services subject to the same terms and conditions of other companies providing operator services pending the Commission's final decision in its investigation of those services. In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, Docket No. P-999/CI-88-917.

In its April 11 Order, the Commission indicated that it would grant the Company interim authority to provide alternative operator services subject to the decisions made in Docket No. P-999/CI-88-917 if the Company met the public safety and consumer protection concerns the Commission has established for other companies providing operator services during the Commission's investigation. The Company met most of those conditions in its December 22, 1988 filing, but was ordered to file documentation that it had:

1. eliminated price discrimination between interLATA and intraLATA calls or showed that LATA boundaries bear a substantial and reasonable relationship to the pricing of operator services;
2. amended its contracts with host facilities to prohibit blocking of end users' access to other operator services providers and that those contracts require that rate and service information be prominently displayed near each telephone.

The Commission finds that the Company has made the required filing and is now capable of providing alternative operator services under the same terms and conditions as other companies providing the services during the pendency of the Commission's investigation into those services. The Commission concludes that it is appropriate to grant the Company authority to provide operator services during the pendency of its AOS investigation. Before granting this authority to operate, the Commission examined the Company's management and financial condition and found that it demonstrated an ability to provide safe, reliable service and to respond promptly to customer complaints. The Company appears to be willing and able to design its operator services business to meet public safety and consumer protection concerns and to protect the interests which underlie them.

This grant of authority is not based on any finding regarding the competitive or noncompetitive nature of operator services, but on a factual finding that this Company, operating under the constraints imposed by this Order, under careful monitoring by the Department, can in all likelihood

provide operator services without jeopardizing the public interest. Today's decision does not imply Commission acceptance of any position under examination in the Commission's investigation of alternative operator services.

### Refund

The Commission will now address the refund issue raised here.

As explained above Minnesota law requires that a telephone company obtain a certificate of authority to operate in Minnesota. Further Minn. Stat. § 237.07 (1988) requires every telephone company to file with the Department a schedule of its exchange rates, tolls, and charges for every kind of service, together with all rules and classification used by it in the conduct of business.

In its April 11 Order, the Commission reiterated its position that it is of the utmost importance for all companies seeking to provide telephone services within Minnesota to request Commission authorization and to comply with all applicable statutory and regulatory requirements.

Telesphere has operated in Minnesota without authorization and, consequently, without tariffed rates. The rates it has charged prior to authorization are illegal.

Further, the Commission notes that Telesphere operates in 12 other states. The Company has experience with regulation. It has secured the approval of commissions in states where it is required or is seeking that approval.

The Department argued that the Company should be required to refund the total revenues it received from intrastate calling during the period from June 8, 1988 (the date its answer to the DPS complaint was due) until December 22, 1988 (the date the Company filed its request for a certificate of authority). The DPS argued that the Company's failure to respond to the Commission's May 19, 1988 Order should not allow it to benefit either monetarily or through gaining market share as a result of disobeying the Commission's Order. The DPS stated that it could find no other case where a telephone company failed to respond to a Commission Order to apply for a certificate of authority after having been ordered to do so by a specific date.

The Company originally argued that any refund required should be limited to the revenue received in excess of AT&T's rates between June 8, 1988 and December 22, 1988. On June 12, 1989, the Company filed a letter stating that it should not be required to make refunds to its customers because other companies in similar positions were not ordered to make refunds. The Company stated that its failure to file for a certificate was inadvertent and unintentional, that it had never received the Commission's May 19, 1988 Order due to improper service. The Company said that its December 22, 1988 filing was voluntary as it was unaware of the DPS complaint and the Commission's Order.

The Commission is sympathetic to the Department's frustration in dealing with companies who have not properly registered with the Secretary of State to do business in Minnesota and who, therefore, have not provided the names and address of persons authorized to receive service of legal documents.

However, the Commission acknowledges that the Company underwent a corporate reorganization in May, 1988 and that the DPS complaint and the Commission's May 19, 1988 Order may not, in fact, have been properly served on the Company. The Commission finds that the Company's failure to seek authorization was inadvertent and that requiring the Company to refund all revenues received from May 19, 1988 to December 22, 1988 would be unduly harsh. However the Commission finds that the Company's original proposal to refund the difference between the rates approved for AT&T for that time period and the rates charged by the Company is a reasonable balancing of the interests in this case. It protects ratepayers from illegal rates. It underscores the importance of complying with regulatory requirements. The Company is not allowed to benefit from its illegal conduct, and ratepayers do not receive the windfall of free service.

On December 22, 1988, the Company filed its request for certification in Minnesota, the Commission finds that this is an acknowledgment of the need for a certificate of authority. This recognition of the Commission's authority dispels any confusion which may have existed earlier and precludes the Company from providing services from that date until that certificate is granted. Therefore, the Commission will require the Company to refund all revenues for intrastate services

provided after December 22, 1988 until the issue date of this Order.

ORDER

1. Telesphere Network, Inc. is hereby granted authority to provide intrastate long distance telecommunications services under Minn. Stat. § 237.16, subd. 4 (1988).
2. Telesphere Network, Inc. is hereby granted interim authority to provide operator services subject to the same terms and conditions of other companies providing operator services pending the Commission's final determination in In the Matter of the Applications for Authority to Provide Alternative Operator Services in Minnesota, Docket No. P-999/CI-88-917.
3. The rates and terms and conditions of service contained in the Company's December 22, 1988 tariff filing as supplemented by its May 12 tariff filing are approved.
4. Within 30 days of the issue date of this Order, the Company shall file a refund plan for the revenue it received in excess of AT&T's rates for intrastate service between June 8, 1988 and December 22, 1988.
5. Within 30 days of the issue date of this Order, the Company shall file an affidavit signed by one of its officers indicating when the Company began and when it stopped providing intrastate service in Minnesota.
6. If the Company did not stop providing intrastate services on December 22, 1988, the Company shall file a refund plan within 30 days of the issued date of this Order to refund all revenues for intrastate service provided after December 22, 1988.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

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